TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 91

JOSEPH G. WILLARD, APPELLANT,

vs.

GEORGE O. PRESBURY, JR., JAMES SYKES AND HENRY A. CHADWICK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 10, 1892.

SUPREME COURT OF THE UNITED STATES.

No. 283.

JOSEPH C. WILLARD, APPELLANT,

vs.

GEORGE G. PRESBURY, JR., JAMES SYKES AND HENRY A. CHADWICK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 In the Supreme Court of the District of Columbia.

Bill of complaint.—Filed Jan. 31, '67.

GEORGE G. PRESBURY, JR., JAMES SYKES and HENRY A. CHADWICK,
vs.
THE MAYOR, BOARD OF ALDERMEN, AND Board of Common Council of the City of Washington, HENRY A. WILLARD and JOSEPH C. WILLARD. } No. 861. Equity Docket 8.

DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the Supreme Court of the District aforesaid, hereby certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled as above.

In testimony whereof I have subscribed my name and caused the seal of the said court to be herewith affixed, this 12th day of June, 1868.

[SEAL.] R. J. MEIGS, *Clerk.*

2 To the judges of the Supreme Court of the District of Columbia:

George G. Presbury, jr., James Sykes and Henry A. Chadwick, bring this, their bill, against the mayor, board of aldermen and board of common council of the city of Washington, Henry A. Willard and Joseph C. Willard.

And thereupon your orators complain and say that on the 15th day of July, 1861, the said defendants, Henry A. Willard and Joseph C. Willard, made and executed a certain indenture of lease, in and by which they leased to your orators certain pieces and parcels of ground lying and being in the city of Washington, in the District of Columbia, and described as follows:

Lots numbered one, two, fifteen and sixteen, and part of lots numbered thirteen and fourteen, in square No. two hundred and twenty-five, as the said lots are marked and laid down on the plat and known and distinguished on the ground plan of said city, for the term of ten years, upon certain terms, covenanant, and conditions, all which will more fully appear by reference to said indenture of lease herewith filed, marked Exhibit A, and prayed to be taken as part of this bill of complaint.

3 Your orators further show unto your honors, among other things in said lease, it is provided and covenanted that your orators, the lessees therein, shall well and truly pay, satisfy, and discharge all and all manner of taxes, rates, duties, assessments and

impositions whatever which may be levied, assessed, or imposed by the Congress of the United States, or by or under the authority thereof, or by the corporate authorities of the city of Washington, during the said term, and which are or may be payable for or in respect to the said premises.

And your orators further show unto your honors, that they entered upon said premises under said indenture of lease, and continue to occupy and use the same according to the terms and provisions of said indenture.

That at the time of making said indenture, that portion of 14th street adjacent to said premises had been graded, and the carriage way thereof paved under the orders and direction of the corporate authorities of Washington, and that said pavement had been thoroughly and substantially laid. and at said time was unimpaired and in perfectly good condition, and so remained until the same was taken up, as hereinafter set forth. That the paving of the carriage way of said portion of said street answered all the purposes for which
4 the public required a street to be paved, and that the same was as substantial and in as good condition as any other highway or street within the corporate limits, and that the said portion of said street in other particulars, to wit, the curbstones and sidewalks, was in good order and condition, and that the same in no way needed and required improvement.

That notwithstanding the condition of said street as aforesaid, the board of aldermen and common council of the city of Washington passed an ordinance directing that certain portions of 14th street, including the portion hereinbefore referred to, be regraded, the said pavement to be torn up and a certain other kind and style of pavement to be substituted in its place, and that the said street be otherwise repaired and changed, as in and by said ordinance, approved Oct. 12th, A. D. 1865, will more fully appear.

And your orators allege and charge that the regrading and repaving, repairs and changes in the said portion of said street, provided to be done in and by said ordinance, were not required, but were wholly unnecessary, and were not asked for or desired, but on the contrary resisted by the owners of property contiguous to said portion of said street, except as hereinafter stated.

And your orators further allege and charge, that, as they are
5 informed and believe, said ordinance, as originally prepared by the committee of the common council having the subject in charge, provided for the grading and paving of 14th street west, from the north side of the canal to the north side of H street north, except that portion of said 14th street bereinbefore referred to and lying between Pennsylvania Avenue and "F" street north, and that the reason for excepting said portion of 14th street from the operation of said ordinance was that whereas the other portions of said street required said improvements so directed in said ordinance, the portion so excepted as aforesaid had already been graded and paved, and did not require such improvements.

And your orators allege and charge that said ordinance would have

passed in that condition but for the misrepresentations of the said defendants, Joseph C. Willard and his contract in regard thereto with the mayor, board of aldermen and common council of the city of Washington.

And your orators say that they are informed and believe that the said Joseph C. Willard, whilst said ordinance was pending before the board of aldermen and common council, went to certain members thereof and protested against excepting from its operation
6 said portion of 14th street between Pennsylvania Avenue and F street, and insisted upon an amendment thereof, and the passage of an ordinance requiring that said portion of said 14th street should be regraded and repaired, representing that the same was required and necessary, and that he and certain of his brothers were the exclusive owners of all property contiguous to said portion of 14th street, or adjacent thereto; that they all desired said work to be done, and that he and they would be required to pay all the assessments for doing the same, well knowing that said representations were untrue and unfounded, and that said work was not necessary and was not desired by the owners of the contiguous property, and also well knowing that by the covenant which he himself had required to be executed by your orators in the lease aforesaid, your orators, and not himself, would be required to pay the assessment, or a large part of the assessment, necessary to be levied to meet the expenses of said work.

And your orators further allege and charge, that as they are informed and believe, the said Joseph C. Willard agreed with the members of the said board of aldermen and common council, and with the mayor of the city of Washington, that if they would
7 pass an ordinance requiring said work to be done, that the said Joseph C. Willard would pay the full amount to be assessed for and on account of the same, and that in consideration of said agreement and part execution thereof said ordinance was passed as aforesaid.

Your orators further say, that the corporate authorities of the city of Washington, by their agents and contractors, entered upon said work so directed to be done under said ordinances approved day of . A. D. 1866, and proceeded to perform and execute the same; and that under and by virtue of the authority claimed from certain acts of Congress and ordinances of the city, the city authorities assessed the property contiguous and adjacent to said 14th street, and assessed the sum of eighteen hundred and thirty-five $\frac{5}{100}$ dollars upon said lots one, fourteen, fifteen and sixteen, demised to your orators for a term of years in and by said indenture hereinbefore referred to; and that the said Joseph C. Willard, refusing to pay the same, has caused the said sum to be demanded from your orators by the corporate authorities of the city of Washington, and declares and says, that if they do not pay the same according to the requirements of said covenant, that the said premises may be sold by
8 the said city, intending to sacrifice the term demised to your orators and himself to purchase said premises at such sale,

And your orators say that said premises are worth, as they are informed and believe, not less than two hundred and fifty thousand dollars.

Your orators further represent, that they have in all things executed, performed and complied with all the covenants imposed upon them in and by said indenture since the date thereof, and that they do not seek to avoid, or in any way impair the force of the covenant therein contained in regard to taxes and assessments, but they claim that said covenant was intended to extend to such taxes and assessments as were levied to meet the wants and necessities of the public for purposes and measure of public convenience and utility, and not for purposes of profit and benefit to their lessors; and they claim that said covenant does not bind them to pay such special assessments as may be caused to be levied upon the said demised premises by the fraudulent misrepresentations and falsehoods of one of the parties for whose benefit said covenant was executed; that one of the parties to said covenant cannot increase the burthen thereby imposed upon the other party beyond what such burthen would have been without his interposition and interference.

9 And your orators aver and charge, that the said Joseph C. Willard, in obtaining the passage of said ordinance by the misrepresentations and falsehoods hereinbefore referred to, practiced a fraud upon your orators for which they are entitled to be protected by the interposition of the equitable jurisdiction of this court.

Your orators further state, that the said corporation of Washington city claim that by said special assessment a lien was created upon the said premises and the entire estate therein, and notwithstanding said contract and arrangement by which the said Joseph C. Willard assumed to pay the amount of said assessment, threaten that if the same is not paid by the 1st day of February, to advertise said premises for sale, and to sell the same, and thereby destroy the estate of your orators therein.

And your orators further allege and say, that said lein so claimed by the said corporation of Washington city is a cloud upon the right and title of your orators.

All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators in the premises. In consideration whereof, forasmuch as your orators are remidiless in the premises according to the strict rules of common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

10 To the end, therefor, that the said corporation of Washington city may be enjoined from advertising the said premises for sale under said assessment, and that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several corporal oaths full, true and direct answer make to such of the several interrogatories hereinafter numbered and set forth as by the note here under written they are respectively required to answer.

That is to say, that the said Joseph C. Willard may answer interrogatory No. 1:

Interrog. No. 1. State whether or not, you executed the lease of which Exhibit A is a copy.

And that the said assessment may be decreed not to be a lien upon the estate of your orators in the said premises, and that the same may be decreed to be irregular and void and set aside, or if the same is not irregular and void, that the said Joseph C. Willard may be decreed to pay the same to the said corporation of Washington city, and that your orators may have such other and further relief in the premises as the nature of their case may require, and to your honors may seem meet; may it please your honors to grant to your
11 orators not only the most gracious writ of injunction of the United States, issuing under the seal of this honorable court, be directed to the said the mayor, the board of aldermen and common council of Washington city, restraining them from advertising or selling the said premises under said assessment, or proceeding to enforce the same against the estate of your orators in said premises, but also the most gracious writ of subpœna to be directed to the said mayor, board of aldermen and common council of Washington city, the said Henry A. Willard and the said Joseph C. Willard, commanding them at a certain day and under a certain pain therein to be specified, personally to be and appear before your orators in this honorable court, and then and there to answer all singular the premises, and to stand to, perform and abide such order decree therein as to your honor shall seem meet; and your orators will ever pray.

GEO. G. PRESBURY, JR.
JAMES SYKES.
HENRY A. CHADWICK,
Per JAMES SYKES.

Subscribed and sworn to by George G. Presbury, jr., and
12 James Sykes, and by Henry A. Chadwick, per James Sykes, before me this 30th day of January, A. D. 1867.

AND'W STEVENS RIDGLEY.
U. S. Commissioner District Maryland.

BRENT & MERRICK,
Solicitors, and of Counsel.

Exhibit A.—Filed Jan. 31, '67.

This indenture, made the 13th day of July, in the year of our Lord eighteen hundred and sixty-one, between Joseph C Willard and Henry A. Willard, of the city of Washington and District of Columbia, of the one part, and George G. Presbury, jr., James Sykes and Henry A. Chadwick, of the other part.

Whereas the said Joseph C. Willard and Henry A. Willard have agreed with the said George G. Presbury, jr., James Sykes and Henry A. Chadwick, to lease to them the messuages and premises

hereinafter described, for the term of ten years, from the fifteenth day of July, eighteen hundred and sixty-one, fully to be complete and ended under and subject to the rents and covenants hereinafter reserved and contained:

13 Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the yearly rent, (the same to be paid in equal monthly payments on the fifteenth day of each and every month,) hereinafter contained, on the part of said George G. Presbury, jr., James Sykes and Henry A. Chadwick, their executors, administrators and assigns to be respectfully paid, observed, kept and performed, and also the sum of one dollar to the said Joseph C. and Henry A. Willard, paid by the said George G. Presbury, jr., James Sykes and Henry A. Chadwick at the sealing and delivering of these presents, the said Joseph C. Willard and Henry A. Willard have granted, bargained, sold, demised and leased, and by these presents do grant, bargain and sell, demise and lease to the said George G. Presbury, jr., James Sykes and Henry A. Chadwick, their executors, administrators and assigns, (the assigns of the said lessees being with the license and consent as hereinafter mentioned of the said lessors,) all those pieces and parcels of ground following, situate in the city of Washington and District of Columbia, and being lots numbered one, two, fifteen and sixteen, and parts of lots numbered thirteen and fourteen, in square numbered two hundred and twenty-five, as the said lots and square are marked and laid down on the plat, and known and distinguished on the ground

14 plan of said city, beginning, for the said parts, lots numbered thirteen and fourteen, at the northeast corner of said square, and running thence west fifty-four feet ten and a half inches along the line of F street north; thence south ninety-nine (99) feet six inches; then west to the public alley in said square forty-five feet ten and a half inches, more or less; then south twenty-one feet nine inches; then east one hundred feet to west Fourteenth street; then north one hundred and twenty-one feet three inches, more or less, to the beginning, with the mesuages, tenements and buildings thereon, together with all and singular the benefit, advantages of the cellars, areas, vaults, light, ways, drains, pipes, waters and all and every other privileges, rights, appurtenances, casements and advantages whatsoever to the said lands and to every part and parcel thereof, or to the said messuages or tenements and premises, and to each and every of them, and every part thereof, the same being now known as "Willards' Hotel," belonging or in anywise appertaining or with the said hotel or any part thereof, now or heretofore, lawfully or usually, holden, used, occupied or enjoyed.

To have and to hold the lands, messuages or tenements, and all and singular other the premises hereby demised or

15 otherwise assured or intended so to be, with the several rights, members and appurtenances, unto the said George G. Presbury, jr., James Sykes, and Henry A. Chadwick, their executors, administrators, and assigns, (such assigns being with the license hereinafter mentioned,) to be occupied by

them as a hotel, under the name of "Willards' Hotel," from the fifteenth day of July instant for and during the full and complete term of ten years from thence next ensuing, yielding and paying for the same yearly and every year during the said term, (except as hereinafter provided,) unto the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, the clear yearly rent of sum of thirty thousand dollars, by equal monthly payments, on the fifteenth day of each and every month during the said term, (the first payment thereof to be made on the fifteenth day of August next ensuing the date of these presents,) free and clear of and from all taxes, rates, or assessments which are now by law, or which shall or may during the said term be laid, levied, or imposed upon the said premises, by Congress or other lawful authority, and free and clear from any deduction or abatement whatsoever for or on account
16 of any repairs done or to be done, is made to or upon any insurance against fire of the said building, or any part thereof.

And the said George G. Presbury, jr., James Sykes and Henry A. Chadwick, for themselves, their heirs, executors, and administrators, hereby covenant and agree to and with the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, in the manner following, that is to say, that they, the said George G. Presbury, jr., James Sykes, and Henry A. Chadwick, lessees as aforesaid, their executors, administrators and assigns, shall and will, from time to time, and at all times during the continuance of the said term hereby granted, well and truly pay, or cause to be paid, unto the said Joseph C. Willard and Henry A. Willard, (lessees as aforesaid,) their heirs and assigns, the said yearly rent or sum of thirty thousand dollars lawful money of the United States aforesaid, the several days and times, and in the manner hereinbefore appointed or mentioned for the payment thereof.

And also will keep, and continuously from and during the said term occupy and employ the said messuages or tenements as a hotel, and by the name of "Willards' Hotel." And also well and
17 truly pay, satisfy, and discharge all and all manner of taxes, rates, duties, assessments, and impositions whatever, which may be levied, assessed or imposed, (or which are now levied, assessed, or imposed,) by the Congress of the United States, or by or under the authority thereof, or by the corporate authorities of the city of Washington, during the said term, and which now are, or at any time hereafter during the said term are or may be payable for or in respect of the said premises, and whether any such future rates, taxes, or duties, or assessments shall be in the nature of those now existing or not.

And also that the said Presbury, Sykes & Chadwick, lessees as aforesaid, their executors, administrators, and assigns, shall and will, at all times, and from time to time, during the continuance of the said demise, well and substantially repair, and maintain and keep in repair, with good materials, at their own proper expense and cost, all and every part of the messuages or tenements, with the fixtures thereto belonging, and all and singular the premises hereinbefore

granted, with their and every of their appurtenances, and also all such fixtures, buildings, additions and improvements, as at any time during the said term shall be put, erected, made or placed by
18 them, the said lessees, their executors, administrators, or assigns, upon the said premises, or any part thereof.

Provided always, and it is hereby declared and agreed, that it shall be lawful for the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, either alone or with workmen, from time to time, and as they shall see fit, they or either of them, during the said term, at seasonable times in the day time, he or they giving at least one day's notice thereof to the said lessees, to enter into and upon the premises hereby demised, and in any part thereof, for the purpose of viewing the condition thereof, and in case any defect or want of reparation of the said premises, or of any part thereof, or any renewal of fixtures shall be found or appear, the said lessees shall and will, on notice thereof in writing being given to them by the said lessees or lessors so making the said examination, cause the said premises to be forthwith well and substantially repaired, and the said fixtures to be replaced; and in case of any disagreement between the said lessees or lessors and the said lessees, as to the necessity of the said reparation, or the replacing of the said fixture or fixtures, it shall be referred to the Commissioner of Public
19 Buildings in the city of Washington, and his decision shall be final and conclusive between said parties.

And it is further agreed that if the said lessees shall fail or refuse to make the said reparations, or to replace the said fixture or fixtures, when required thereto as aforesaid, or upon the decision of the said Commissioner being notified to him, and the sum shall be and remain unrepaired and not replaced for the space of five days thereafter, it shall and may be lawful for the said lessee or lessors to cause the said repairs to be made, or the said fixture to be replaced, and to charge the costs and expenses thereof to the said lessees to be repaid by them, with interest, at the then next periodical payment of the said rent hereinbefore reserved.

And the said George G. Presbury, jr., James Sykes, and Henry A. Chadwick do, in manner and form aforesaid, further covenant and agree that they, their executors, administrators, or assigns, shall not will, during the tenor hereby granted, give, demise, let, assign, or set over, or otherwise part with, (except by last will or testament,) or cause or procure to be given, granted, demised, set over, or otherwise disposed of, either by their act or deed, or with their permission or suffrance or default, this present indenture of demise, or the premises, or any part thereof, hereinbefore demised, or his or their estate, term, or interest therein, or any part of the same, unto any person or persons whomsoever, without the
20 consent and license of said Joseph C. Willard and Henry A. Willard, their heirs and assigns, first had and obtained under their hands and seals, for that purpose; and every such license and consent shall be limited and confined to the particular person therein named, and shall not be considered to extend beyond such person or

persons, or to empower him or them to make any assignment thereof without the assent of the said lessors; and provided further, that every such assignment and transfer shall be on the express condition that the assignee shall continue to occupy and use the said demised premises as a hotel, under the name of "Willards' Hotel," and that the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, shall not nor will arbitrarily, and without good and sufficient reason, refuse their assent of said assignment, or the condition aforesaid. And also, and these presents are made on this express condition, that if the said yearly rent or sum of thirty thousand dollars hereinbefore reserved or made payable, any part thereof, shall be in arrear and unpaid for the space of thirty days next after any of the days or times hereinbefore appointed for the payment thereof, and the same shall be lawfully demanded, and shall not be paid up and satisfied, or if they shall or do assign, let, set over, or otherwise part with
21 the said premises, or their estate or interest therein, or any part of the same, contrary to the covenant and agreement hereinbefore contained, or if they shall occupy and use the said premises otherwise than as a hotel, or under any other name except "Willards' Hotel," then and from thenceforth, in either of said cases, the lease and demise hereinbefore made shall cease, and the term hereinbefore granted shall be at an end. It shall and may be lawful for the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, to give thirty days' notice in writing to the said George G. Presbury, jr., James Sykes, and Henry A. Chadwick, their executors, administrators, and assigns, to remove from and quit the said premises at the end of the said thirty days; and on the failure, neglect, or refusal to remove from, quit, and surrender the said premises at the expiration of the said thirty days' notice, instead of being obliged to resort to the action of ejectment possessory action to recover the possession of the said premises, it shall or may be lawful for the said Joseph C. Willard and Henry A. Willard, their heirs and assigns, to recover possession of the said premises in case of lands or messuages holden by tenants for years, or at will, after the expiration of their terms under and by virtue of the
22 act of assembly of the State of Maryland, chapter forty-three, November session, seventeen hundred and ninety-three.

And the said Joseph C. Willard and Henry A. Willard, for themselves, their heirs and assigns, hereby covenant and agree to and with the said George G. Presbury, jr., James Sykes and Henry A. Chadwick, their executors, administrators and assigns, that they, the said Joseph C. Willard and Henry A. Willard, now have good rights and lawful authority to grant and demise the said land and premises in manner and form aforesaid, and upon the rent, terms and conditions hereinbefore reserved and contained.

And also that they and their heirs, and all and every person and persons lawfully claiming or to claim any estate or interest in the said demised premises, shall and will, upon the reasonable request and cost of the said lessees hereof, make, execute, acknowledge and deliver all such other and further deeds and assurance which may

be deemed requisite and necessary by counsel carried in the law by secure, and assure the said lands and premises for the term aforesaid, and upon the rent and conditions aforesaid, to the said George G. Presbury, jr., James Sykes, and Henry A. Chadwick, their executors, administrators and assigns.

23 And also that the said lessees, paying the rent and performing each and every of the covenants, agreements and conditions aforesaid, shall and may peaceable and equity use, occupy, possess and enjoy the said lands and premises for and during the term aforesaid.

In testimony whereof the said parties have hereto interchangeable set their hands and affixed their seals the day and year first hereinbefore written.

(Signed) J. C. WILLARD.
H. A. WILLARD.
GEO. G. PRESBURY, JR.
JAMES SYKES.
H. A. CHADWICK.

Witness:
B. H. BREWSTER.
O. E. P. HAZARD.

Order for hearing appl'n for injunction.—Filed Jan'y 31, '67.

Ordered, that the application for an injunction on the aforegoing bill be heard on the 5th day of February next, and that notice of the pending of the suit and this order be served on defendants.

January 31st, 1867.

A. B. OLIN, *Justice, &c.*

24 In the Supreme Court of the District of Columbia, January 31st, 1867.

Summons to answer.—Issued January 31st, 1867.—*Returned Feb'y* 5, 1867.

GEORGE G. PRESBURY, jr., compl'ts, *vs.* THE MAYOR, ALDERMEN, &c., OF WASHINGTON City, *et al*, def'ts. } No. 861.—Equity. Dock. 8.

The President of the United States to the Mayor and Boards of Aldermen and Council of Washington City, and Henry A. Willard and Joseph C. Willard, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk, &c.*

Memorandum.—That the defendants are to enter therein appearance in this suit in the clerk's office on or before the special term to

which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.—Feb'y 5, '67.

"Sum'd Rich'd Wallach, mayor, Joseph C. Willard; non est H. A. Willard."

D. S. GOODING, *Marshal.*

Jan'y 31st, 1867.

25 In the Supreme Court of the District of Columbia, January 31st, 1867.

Notice of hearing appl'n for injunction.—Issued Jan. 31, '67.

GEORGE G. PRESBURY, jr.,
v.
MAYOR OF WASHINGTON CITY, D. C., BOARDS of Aldermen and Council, Henry A. Willard and Joseph C. Willard. } 861.—Eq. Doc. 8.

You are hereby notified that an application for an injunction in this cause will be heard in said court on the 5th day of February, 1867.

Witness D. K. Cartter, chief justice, &c.

R. J. MEIGS, *Clerk, &c.*

Marshal's return, Feb'y 5, '67.

"Served copy of notice on Rich'd Wallach, mayor, Joseph C. Willard; non est H. A. Willard."

D. S. GOODING, *Marshal.*

Jan'y 31st, 1867.

In the Supreme Court of the District of Columbia.

Answer of def't, J. C. Willard.—Filed Feb'y 16, '67.

JOSEPH C. WILLARD *et al.*
a. t. s.
GEORGE G. PRESBURY, jr., *et al.* } No. 761.—Equity Docket 8.

The separate answer of Joseph C. Willard to the bill of complaint of George G. Presbury, jr., et al. against him et al. in chancery exhibited.

26 This defendant, saving and reserving to himself all manner of exceptions to said bill of complaint, for answer thereto, or so much thereof as he is advised it is material and proper for him to make unto answering, says: That he admits that Henry Willard and himself made and executed a lease for lots 1, 2, 15 and 16, and parts of lots 13 and 14, in squares No. 225, in the city of Washington, D. C., unto the said complainants for the term of ten years from

the 15th July, A. D. 1861, with a covenant therein, among others, for the payment of taxes, assessments, &c., as stated in said bill of complaint.

This defendant has not compared what purports to be a copy of said lease filed with said bill of complaint, marked Exhibit A, with the original lease, and cannot, therefore, say whether the same is a true copy thereof or not, but for certainty herein prays leave to refer to the record of said lease as part of this answer, as the same is recorded in liber J. A. S., No. 208, fol. 366, et seqr., of the land records of Washington county of the District of Columbia.

This defendant admits that said complainants entered into possession of said premises under said lease. He further admits that at
27 the time of making said lease that portion of 14th street adjacent to said premises had been graded and paved, and was in tolerably good condition at that time; but this defendant cannot say that the carriage way of said street answered all the purposes for which the public required a street to be paved. He admits that on the 12th October, A. D. 1865, the board of aldermen and common council of the city of Washington passed an ordinance to pave said street, including the portion thereof adjacent to said leased premises; but he denies that the repairing of that portion of said street was not required and was wholly unnecessary, and was resisted by the owners of property contiguous to said portion of said street. He admits that the ordinance as originally proposed provided for the grading and paving of said street from the canal to H street north, except that portion thereof between Pennsylvania Avenue and F street.

This defendant denies that he made any misrepresentation to the legislative authorities of the city of Washington to have said exception stricken out of said ordinance, and that he made any contract in regard thereto with the mayor, board of aldermen and common council of the city of Washington.

He admits that whilst said ordinance was pending he did pro-
28 test to members of the board of aldermen and common council against excepting from its operation said portion of 14th street between Pennsylvania Avenue and F street, and insisted that the same should be included in said ordinance, but he denies that he represented that his brothers as well as himself desired said work to be done, and that he and they would be required to pay all the assessments for doing the same. This defendant denies that he agreed with the members of said board of aldermen and common council and with the mayor of the city of Washington, that if they would pass an ordinance requiring said work to be done, that he would pay the full amount to be assessed for and on account of the same, and that in consideration and part execution thereof said ordinance was passed as aforesaid.

This defendant further admits that the corporate authorities of the city of Washington under certain powers vested in them did cause said work to be done about the month of , A. D. 1866, and said property to be assessed as stated in said bill of complaint. This

defendant denies that said complainants have in all things executed performed and complied with all the covenants imposed upon them in and by said indenture of lease since the date thereof.

And for further answer to said bill of complaint this defendant avers and says that said premises leased comprise what is
29 known as Willards' Hotel, the same being the largest hotel in the city of Washington, capable of accomodating five hundred or more guests, and extending on 14th street from Pennsylvania Avenue to F street, a distance of 309½ feet; that there are two private entrances to said hotel on said 14th street, one of which is the ladies' entrance; that at the time said lease was executed the carriage way of that portion of said 14th street was paved with cobble stones, which at best makes but a rough pavement easily put out of repair; that when respondent saw that said street was to be paved with the pavement north and south of said hotel premises, he desired that the whole should be alike, inasmuch as the same is made of cubic blocks of hard rock, forming an even and very durable pavement, far superior to the cobble stone pavement, and especially proper and necessary in that portion of said street adjacent to said hotel; that this respondent was the owner of other real estate fronting 255 feet on said 14th street between F and H streets north, and did endeavor to have that portion of said 14th street between the Avenue and F street included in the ordinance for paving said street, but did not make any misrepresentations to have the same effected nor procure the same by fraud; that whilst said ordinance was pending one of the members of the board of alderman informed this respondent
30 that the only party objecting to said pavement between the Avenue and F street was one Mrs. Burch, having property on the east side of said 14th street, whom he represented to be a poor woman unable to pay her portion of the assessment; that this respondent thereupon said that if that was the only obstacle he would himself pay her portion of the assessment, and since then having purchased said property he has paid said assessment; and this defendant having answered fully prays to be hence dismissed with his costs in this behalf most unjustly incurred, and will ever pray, &c.

J. C. WILLARD.
W. D. DAVIDGE,
W. F. MATTINGLY,
Sol'rs for Def't.

DISTRICT OF COLUMBIA, *County of Washington, to wit*:

Before the subscriber personally appeared this 16 day of February, A. D. 1867, Joseph C. Willard, and made oath in due form of law that the several matters and things herein above stated as of his own knowledge are true, and that those things stated upon information derived from others he believes to be true.

[SEAL.] J. W. BARNACLO, *J. P.*

[Stamp, cancelled.]

31 In the Supreme Court of the District of Columbia.

Order for injunction.—Filed Feb'y 28, '67.

SYKES, CHADWICK & Co. *vs.* CITY OF WASHINGTON *et al.* } In equity.

The motion for an injunction in this cause having been argued by counsel and duly considered by the court, it is thereupon, this 28th day of February, A. D. 1865, ordered by the court that the said corporation of Washington, its officers and agents, be and they are hereby enjoined and prohibited from advertising or selling the premises described in said bill of complaint for the purpose of paying and satisfying the special assessment therein particularly referred to and set forth.

That the plaintiffs, or one of them, file a bond in the penal sum of four thousand dollars to answer all damages that may accrue to the said city of Washington from granting this injunction, with surety to be approved by this court or the clerk.

A. B. OLIN, *Justice.*

Injunction bond.—Filed Mar. 1, '67.

Know all men by these presents that we, James Sykes, H. A. Chadwick, Geo. Presbury, and S. M. Owen, are held and
32 firmly bound unto the mayor, board of aldermen and board of common council of the city of Washington, in the penal sum of four thousand dollars, to the payment of which we bind ourselves and each of us, and our and each of our heirs, executors, and administrators firmly by these presents.

Whereas the Supreme Court of the District of Columbia has granted an injunction against the mayor, board of aldermen and common council of the city of Washington, in a certain cause depending in said court in which James Sykes, H. A. Chadwick, and George G. Presbury, jr., are plaintiffs, and the said the mayor, board of aldermen and board common council of the city of Washington, and Joseph C. Willard and Henry A. Willard, are defendants:

Now the condition of this obligation is such that if the above bounden shall well and truly pay or cause to be paid to the said the mayor, board of aldermen and board of common council of the city of Washington all damage that may accrue to it by reason of the granting of said injunction, in the event the same should be dissolved, then this obligation to be null and void and of no effect, otherwise to remain in full force.

As witness our hands and seals this 28th day of February, A. D. 1867.

[SEAL.] JAMES SYKES.
33 [SEAL.] H. A. CHADWICK.
[SEAL.] GEO. G. PRESBURY, JR.
Per JAMES SYKES.
[SEAL.] S. M. OWEN.

Approved March 1, 1867. R. J. MEIGS, *Clerk.*

In the Supreme Court of the District of Columbia, March 1st, 1867.

Injunction issued Mar. 1, '67.

GEORGE G. PRESBURY, JAMES SYKES, and Henry A. Chadwick,
vs.
THE MAYOR, &C., OF WASHINGTON City, and Joseph C. Willard and Henry A. Willlard.
No. 861. Equity dock. 8.

The President of the United States to the defendants, greeting:

For causes and reasons set forth and shown in the bill and order of injunction filed in this cause you are hereby enjoined and strictly prohibited, you and your officers and agents, from advertising or selling the premises described in said bill.

Hereof fail not under pain of attachment and such other process of contempt as may be issued by the court against you.

Witness:

D. K. CARTTER,
Chief Justice.
R. J. MEIGS, *Clerk.*

34 *Marshal's return.—Mar.* 6, '67.

"Served copy of the within injun. on Rich'd Wallach, mayor, and J. C. Willard, March 2, 1867. Non est Henry Willard."

D. S. GOODING, *Marshal.*

Order dismissing cause vs. J. C. Willard.—Filed Ap'l 2, '68.

PRESBURY *et al.*
vs.
WILLARD *et al.*
861. Equity docket 8.

On motion of Wm. F. Mattingly, sol'r of J. C. Willard, it is, this 2d day of April, 1867, ordered, that the above cause be and hereby is dismissed as to J. C. Willard for want of replication, under 66th rule.

Order vacating order dismissing bill as to J. C. Willard.—Filed June 1, '67.

GEORGE G. PRESBURY, JR., *et al.*,
vs.
THE CORPORATION OF WASHINGTON and Joseph C. Willard *et al.*
861; equity.

Ordered by the court, this first day of Juue, A. D. 1867, that the order heretofore passed, dismissing the complainants' bill as to Joseph C. Willard for want of a replication, be and the same is hereby vacated and set aside, on condition that the complainant file replication forthwith and speed the cause.

A. B. OLIN, *Justice.*

31 In the Supreme Court of the District of Columbia.

Order for injunction.—Filed Feb'y 28, '67.

SYKES, CHADWICK & Co.
vs.
CITY OF WASHINGTON *et al.* } In equity.

The motion for an injunction in this cause having been argued by counsel and duly considered by the court, it is thereupon, this 28th day of February, A. D. 1865, ordered by the court that the said corporation of Washington, its officers and agents, be and they are hereby enjoined and prohibited from advertising or selling the premises described in said bill of complaint for the purpose of paying and satisfying the special assessment therein particularly referred to and set forth.

That the plaintiffs, or one of them, file a bond in the penal sum of four thousand dollars to answer all damages that may accrue to the said city of Washington from granting this injunction, with surety to be approved by this court or the clerk.

A. B. OLIN, *Justice.*

Injunction bond.—Filed Mar. 1, '67.

Know all men by these presents that we, James Sykes, H. A. Chadwick, Geo. Presbury, and S. M. Owen, are held and
32 firmly bound unto the mayor, board of aldermen and board of common council of the city of Washington, in the penal sum of four thousand dollars, to the payment of which we bind ourselves and each of us, and our and each of our heirs, executors, and administrators firmly by these presents.

Whereas the Supreme Court of the District of Columbia has granted an injunction against the mayor, board of aldermen and common council of the city of Washington, in a certain cause depending in said court in which James Sykes, H. A. Chadwick, and George G. Presbury, jr., are plaintiffs, and the said the mayor, board of aldermen and board common council of the city of Washington, and Joseph C. Willard and Henry A. Willard, are defendants:

Now the condition of this obligation is such that if the above bounden shall well and truly pay or cause to be paid to the said the mayor, board of aldermen and board of common council of the city of Washington all damage that may accrue to it by reason of the granting of said injunction, in the event the same should be dissolved, then this obligation to be null and void and of no effect, otherwise to remain in full force.

As witness our hands and seals this 28th day of February, A. D. 1867.

[SEAL.] JAMES SYKES.
33 [SEAL.] H. A. CHADWICK.
[SEAL.] GEO. G. PRESBURY, JR.
Per JAMES SYKES.
[SEAL.] S. M. OWEN.

Approved March 1, 1867. R. J. MEIGS, *Clerk.*

In the Supreme Court of the District of Columbia, March 1st, 1867.

Injunction issued Mar. 1, '67.

GEORGE G. PRESBURY, JAMES SYKES, and Henry A. Chadwick,
vs.
THE MAYOR, &C., OF WASHINGTON City, and Joseph C. Willard and Henry A. Willlard.
No. 861. Equity dock. 8.

The President of the United States to the defendants, greeting:

For causes and reasons set forth and shown in the bill and order of injunction filed in this cause you are hereby enjoined and strictly prohibited, you and your officers and agents, from advertising or selling the premises described in said bill.

Hereof fail not under pain of attachment and such other process of contempt as may be issued by the court against you.

Witness:

D. K. CARTTER,
Chief Justice.
R. J. MEIGS, *Clerk.*

34 *Marshal's return.—Mar.* 6, '67.

"Served copy of the within injun. on Rich'd Wallach, mayor, and J. C. Willard, March 2, 1867. Non est Henry Willard."

D. S. GOODING, *Marshal.*

Order dismissing cause vs. J. C. Willard.—Filed Ap'l 2, '68.

PRESBURY *et al.*
vs.
WILLARD *et al.*
861. Equity docket 8.

On motion of Wm. F. Mattingly, sol'r of J. C. Willard, it is, this 2d day of April, 1867, ordered, that the above cause be and hereby is dismissed as to J. C. Willard for want of replication, under 66th rule.

Order vacating order dismissing bill as to J. C. Willard.—Filed June 1, '67.

GEORGE G. PRESBURY, JR., *et al.*,
vs.
THE CORPORATION OF WASHINGTON and Joseph C. Willard *et al.*
861; equity.

Ordered by the court, this first day of Juue, A. D. 1867, that the order heretofore passed, dismissing the complainants' bill as to Joseph C. Willard for want of a replication, be and the same is hereby vacated and set aside, on condition that the complainant file replication forthwith and speed the cause.

A. B. OLIN, *Justice.*

35 *Replication.—Filed June 5, '67.*

PRESBURY *et al.*
vs.
CITY OF WASHINGTON *et al.* } 861. Eq. Docket 8.

These repliants deny the truth of the defendant's answer and the sufficiency of the matter alleged in it to bar these repliants' suit, and they aver the truth and sufficiency of their bill, and are ready to maintain and prove the same as the court shall direct, and pray as in and by said bill is already prayed.

BRENT & MERRICK,
For Complainants.

Decree pro confesso.—Filed Sep. 3, '67.

PRESBURY *et al.*
vs.
CORP'N OF WASHINGTON *et al.* } 861. Equity Dock. 8.

On motion of R. T. Merrick, esq., solicitor for compl'ts, it is this 3d day of September, 1867, ordered that a decree pro confesso, for want of answer, be entered against the Corporation of Washington.

36 *Plea by the def't, "Corp." of Washington.—Filed Dec. 3, '67.*

SYKES, CHADWICK, *et al.*,
vs.
THE CORPORATION OF WASHINGTON *et al.* } 861. Eq. Dock. 8.

The defendants, The Corporation of the City of Washington, pray leave to move the court to set aside the decree pro confesso, heretofore entered in this cause against them, and for further leave to file the following plea and motion to dissolve the injunction heretofore issued against them:

And for plea they say that, not admitting the facts stated and set up in the said bill, but protesting that the same are not true, they say they are a body politic and corporate, under and by virtue of certain acts of Congress of the United States invested with certain powers as to the improvement of the streets and avenues in the said city; to graduate and pave the same, and assess the cost and expenses of such improvements, graduation, and pavement in a certain mode prescribed in and by the said acts of Congress, and pursuant to by-laws passed by said corporation, under and by virtue of said acts of Congress, and not otherwise. And they say that the work required to be done, and which was done, upon that part of Fourteenth street west set out and complained of in said bill,
37 was ordered, done, and completed pursuant to the said acts of Congress and by-laws, and not otherwise; and they did not, in point of fact, and had no power in law, to do the same, and did not do the same under or by virtue of any agreement with the said Jo-

seph C. Willard, or in particular under the pretended promise and agreement of said Willard, set up in said bill; and they are advised that such an agreement would have been beyond their powers; and if such agreement was made by the mayor of said city, or any other officer or officers thereof, the same was made without any authority; in point of fact, they say that the said assessment of which the complainants complain in their said bill were duly made under and by virtue of the powers conferred, in and by said acts of Congress, on these defendants; and they are advised that these facts constitute and they plead them as a full bar to complainants' right to any relief under their said bill.

Wherefore they pray that the said bill may be dismissed, &c.

BRADLEY & BRADLEY, *Sol'rs.*

38 *Order extending time to take testimony.—Filed Dec.* 3, '67.

WILLARD *vs.* CORPORATION OF WASHINGTON and Willard. } In equity. Nos. 861 and 866.

Ordered, on motion of the complainants, this 3d day of December, 1867, that the time for taking testimony in these cases be extended for thirty days from this day.

By order of the court.

Order vacating, &c., decree pro confesso, &c.—Filed Dec. 31, '67.

SYKES & CHADWICK *vs.* THE CORPORATION OF THE CITY OF Washington *et al.* } No. 861. Equity Docket 8.

On motion of the solicitor for the corporation of the city of Washington, made in open court, after due notice to the solicitor for the complainants, it is by the court this 31st day of December, A. D. 1867, ordered, that the decree pro confesso suffered by the said corporation at September rules, A. D. 1867, be vacated and set aside, and leave be and is hereby granted to said corporation to withdraw its plea heretofore pleaded, and plead or answer.

By order of the court.

39 *Order setting cause for hearing.—Filed Jan'y* 7, 1868.

PRESBURY *et al.* *vs.* CORP'N OF WASHINGTON. } 861. Equity Docket 8.

On motion of Wm. F. Mattingly, esq., sol. for def't, J. C. Willard, it is this 7th day of January, 1868. ordered, that the above cause be set down for hearing and placed on July calendar.

Agreement of parties to plea.—Filed May 2, '68.

C. C. WILLARD
vs.
MAYOR OF WASHINGTON *et al.* } 866. In equity.

PRESBURY, *et al.*
vs.
MAYOR OF WASHINGTON *et al.* } 861. In equity.

It is agreed in the above cases that the corporation of Washington shall be considered as having filed a plea in bar of all relief claimed against it in each of said cases, and that said plea shall be taken as relying alone on the charter and legislation of Congress and ordinances of W. city, in bar of said relief, as prayed, and that such charter and ordinances may be read at the hearing of the cause the same as if fully set forth by way of plea; and if the plea be overruled, this defendant shall have leave to answer.

R. T. MERRICK,
For Compl't.
JOS. H. BRADLEY, JR.,
Sol. for Corp'n.

40 *Order certifying cause to gen. term.—Filed May 2, '68.*

Ordered, this 2d day May, 1868, that the within-entitled causes be, and they are hereby, certified to the court in general term, to be held on the 4th of May, to be heard in the first instance.

O. B. OLIN, *Justice.*

In the Supreme Court of the District of Columbia.

Compl'ts' testimony.—Filed May 9, 1868.

PRESBURY *et al.*
vs.
WILLARD *et al.* } No. 861. In chancery.

Depositions for complainants.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered, on the 20th and 21st days of December, in the year of our Lord one thousand eight hundred and sixty-seven, J. Mahlon Ashford, an examiner in chancery, did cause to be personally present at my office, No. 2 Columbian College Law Building, in the city of Washington, in said District, Richard Wallach, Samuel W. Owen, H. A. Chadwick, and Chas. G. Ball, to testify on the part and behalf of the complainant in a certain cause now depending in the Supreme Court of the District of Columbia, wherein Presbury and

41 *Deposition of Richard Wallach, for complainant.*

And the said Richard Wallach, being about the age of 45 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Richard Wallach, and he did thereupon testify and say as follows:

I was mayor of the city of Washington in the year 1865.

I remember signing an ordinance of the corporation in that year for paving 14th street west from Canal to H street north. I don't remember the date of the ordinance. Mr. Joseph C. Willard had an interview with me while that ordinance was pending in the city councils, and expressed an anxiety for its passage, and seemed to be very anxious that it should pass. He made no representations to me while the bill was pending. After the bill was passed, and while the work was in progress—it was not my intention to touch the pavement north of the Avenue and south of F street; that is, I hes-

42 itated about touching the old cobble-stone pavement along there—Mr. Joseph C. Willard urged me to have it taken up and repaired with the blue nice pavement, and as an inducement for me to do so, he said that he had the entire portion of one side to pay for, and that he and his brother together owned the larger proportion of the property fronting on that portion of the street than any one else; and when I suggested that there might be some objection on the part of Mrs. Farnham and Mrs. Burch, the owners of the remaining portion of the property fronting on that portion of the street, he said that if they objected to paying for it that he would be responsible, or words to that effect.

I don't think I would have had the paving done at that time but for the representations and urgent requests made by Mr. Willard. I had plenary power in the matter given me by the ordinance. It would, of course, have been better, I thought, to have had the nice pavement put there, but there had been recently constructed a sewer along 14th, and inasmuch as that portion of the street from the Avenue and F street was already paved, and the other portions of the

43 street not paved, and inasmuch as the property owners had been taxed recently for the sewer, I did not think it right at that time to put them to the expense of a new pavement, and it was only done at the earnest solicitation of Mr. Willard.

Cross-examined.

By Mr. Mattingly:

I had three or four conversations with Mr. Willard about the pavement. There was one conversation while this ordinance was pending, but nothing was said thereat of much importance. The conversations to which I have alluded took place subsequent to the passage of the act, and while the work was in progress.

I think he wrote me a note in which he represented that his prop-

erty would have to pay for the pavement, and urging that as a reason for having the work done. There was no agreement between him and myself representing the corporation, whereby he was to be personally responsible for the cost of the pavement, other than as stated above. In ordering the work to be done, I had no idea of releasing the property from the payment of the cost thereof. I, of course, have no idea of doing so, and had no power to do so.

In regard to Mrs. Farnham and Mrs. Burch not paying, he said that he would make it all right with them, or words to that effect

44 I know nothing of any obligation on the part of Sykes & Chadwick to pay for this pavement. If I had have known of it, I should probably have required their consent to it.

The first knowledge I had on that subject was shortly after the application for the injunction. I can't state how long the work was in progress. I don't recollect. I don't know that I mentioned Mrs. Burch's name in my conversation with Mr. Willard, and don't know when she died.

Re-examined.

Mr. Willard gave me to understand that he would have to bear the expense of the pavement in front of his property.

(Signed) RICHARD WALLACH.

Sworn to and subscribed before me this 20th day of December, A. D. 1867.

(Signed) M. ASHFORD, *Examiner*.

And thereupon the complainant produced as a witness one Samuel W. Owen.

Deposition of Samuel W. Owen, for complainants.

45 And the said Samuel W. Owen, being about the age of 41 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Samuel W. Owen, and he did thereupon depose and say as follows, in answer to questions put to him by complainants' solicitor:

I am residing at present on Pennsylvania Avenue, next door to Willards' Hotel, and am carrying on the tailoring business and running a hotel.

I have been doing business in that neighborhood about twenty-eight years. I was a member of the board of aldermen in the year 1865. I drew up a bill providing for the paving of 14th street west from the canal to Pennsylvania Avenue, and from F street north to H street north, excluding that portion of said 14th street lying between the Avenue and F street. I offered the bill and it was referred to the committee on improvements, and while it was before that

committee Mr. J. C. Willard presented to the committee a bill providing for the improvement of that portion of the street excluded in my bill. The alderman who presented that bill was very urgent about it, and asked its reference to the committee on improve-
46 ments, with the request that it be reported on that evening, my bill being already in their hands. The bill was handed to me by the chairman of the committee on improvements, and I altered his bill so as to conform to the requirements of the bill presented by Mr. Willard. I don't know that it was Mr. Willard's bill, but presumed it was. I had not included the portion of 14th street between the Avenue and F street for the reason that it was already paved. I don't think the bill was reported that night, and it lay over for some time. I omitted that portion of 14th street because I considered that it was paved well enough. It was paved with cobble stones. If the whole street had been paved with cobble stone, I (think) that would have been sufficient. But still I thought it better to have it uniform, and I had no objection to it, as I was an improvement man. I considered the pavement on that portion of 14th between the Avenue and F street as sufficient as it then existed for all public purposes. I considered it the best cobble stone pavement in the city.

I remember having a conversation with Mr. Joseph C. Willard, when the bill, as it were, hung fire. He seemed to be urgent
47 about it, and was rather vexed that there should be any delay in passing the bill when the property owners along there wanted the work done. In that conversation he said that he and his brothers would have to pay for most of the work, and that the other property owners along there were fully able to pay their proportion, except as to the Burch property, and if there was any objection as to that, he would pay for it himself—that portion of it.

I knew of no inducements held out by Mr. J. C. Willard to procure the passage of the bill or the construction of the work, except what I have stated above.

Cross-examined.

By Mr. Mattingly:

I am well acquainted with Willards' Hotel. It is the largest in the city. There are two public entrances to the hotel from 14th street. I don't know much about pavements and can't say whether cobble stone is better than the blue stone or not. I know Messrs. Sykes and Chadwick. I don't know Mr. Presbury. I have no personal knowledge of their having a lease on the hotel. I un-
48 derstood they had. I knew nothing at the time of there being any obligation on them to pay for paving the streets. I never told Mr. Willard that there was any objection on the part of Mrs. Burch to having the work done. And I did not know that any one objected to it, as at that time it did not require the consent of the property owners. And if the cobble stone pavement had not been there I should have included that portion of the street in my bill, notwithstanding objections from any one.

S. W. OWEN.

Sworn to and subscribed before me this 20th day of December, 1867.

M. ASHFORD, *Examiner.*

Deposition of H. A. Chadwick, for Chadwick & Co.

And the said Henry A. Chadwick, being about the age of 40 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Henry A. Chadwick, and he did thereupon depose, testify and say as follows:

In answer to questions by Mr. Morris: I am one of the
49 firm of Sykes, Chadwick & Co., and a party to this suit. Before making the lease with Mr. Joseph C. Willard I took a full survey of the property and all its surroundings.

(Objected to by Mr. Mattingly.)

Question. In what condition did you find the pavement of 14th street between Pennsylvania Avenue and F. street?

(Objected to.)

Answer. I found it as good a pavement as any in the city; and at the time it was taken up it was the best piece of pavement in the city. It was a cobble stone pavement. I received a notice from Mr. J. C. and H. A. Willard to reset the curb stone; and on examining the curb I found it a little askew. I then handed the notice to Mr. Chas. G. Ball and told him to attend to it, which he did, and I paid him for it. Afterwards I was informed that the notice meant to take up the pavement of the street and put a new one down, at which I was perfectly suprised. Shortly after that workmen proceeded to take up the old pavement, and it was taken up and a new one put down.

(All above answer objected to.)

50 Question. What knowledge had you, if any, of the pendency of the ordinance in the councils for repairing the street?

(Objected to.)

Answer. I had none whatever.

Question. When did you first know of it?

(Objected to.)

Answer. Not until after the work was commenced.

Question. Please state how far the condition of the street entered into the consideration of making the lease.

(Objected to.)

Answer. The street at the time needed no repair. It was in good condition. I had no objection to paying for any necessary repairs. The pavement had been done about five years when it was taken up.

H. A. CHADWICK.

Sworn to and subscribed before me this 31st day of December, 1867.

M. ASHFORD, *Examiner.*

51 And thereupon Mr. Charles G. Ball was produced as a witness, who being of lawful age, and being duly sworn, deposes and says:

Question. What is your occupation?

I am a bricklayer. I was employed by Mr. Chadwick to set a curbstone on 14th street.

Question. Please state in what condition 14th street was at the time it was repaired, between Pennsylvania Avenue and F street.

(Objected to.)

Answer. It was in the very best condition.

CHAS. G. BALL.

Sworn to and subscribed before me this 31st day of December, 1867.

M. ASHFORD, *Examiner.*

DISTRICT OF COLUMBIA, *County of Washington, ss:*

52 I, Mahlon Ashford, examiner in chancery, do hereby certify, that in pursuance of due notice the foregoing depositions were taken down and by me reduced to writing, in the presence of, and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in presence of the solicitors in the cause, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

M. ASHFORD, *Examiner.*

In the Supreme Court of the District of Columbia, sitting in general term, May, 1868.

General term.—Final decree.—Filed June 12, '68.

PRESBURY *et al.* *vs.* WILLARD *et al.* } 861. Equity Dock. 8.

53 This cause came on to be heard at this term, and was argued by counsel, and it appearing to the court that the improvement mentioned in the complainants' bill, for and on account of which the special assessments in said bill referred to was levied, was not needed and required by the then condition of the said street, but that the said street was in perfectly good condition; and that said improvement was made at the special instance and request of the defendant, Joseph T. Willard, upon representation from him that he would pay for the same, or that his property alone was liable therefor; and which representations of Joseph C. Willard were in fraud of the

covenant entered into by and between him and the said complainants, and were further intended to enhance the value of the reversion of him the said Willard at the cost of the said complainants and their estate in the premises; it is thereupon this 12th day of June, A. D. 1868, ordered, adjudged and decreed, as follows, viz: That the said Joseph C. Willard is, and is hereby declared to be, personally liable to pay the said assessments mentioned in said bill of [bill of]
54 complaint, as levied upon the premises leased by said complainants, and unless he shall pay the same within ten days from the passing of this decree to the corporation of Washington city, the said corporation shall be empowered, and are hereby authorized and directed, to expose at public sale all the reversionary interest of the said Joseph C. Willard of, in, and to the premises described in said bill of complaint as demised to the said complainants, to pay the amount of said assessments which may then remain unpaid, and that said sale shall be had in the usual manner as prescribed by and practiced under the provisions of the charter and ordinances of said corporation authorizing the sale of real estate liable to pay special assessments, and in default for the non-payment thereof; and if any surplus shall remain after applying the proceeds of the sale to the payment of said assessments, the same shall be paid to the said Joseph C. Willard.

And it is further ordered, decreed and adjudged, that the said corporation of Washington, and its officers and agents, be en-
55 joined and restrained from setting up and exposing to sale the leasehold interest or estate of the complainants in the property demised to them as in said bill set forth and described, or from otherwise molesting the complainants in the premises. And it is further ordered and decreed that as to Henry Willard the said complainants' bill be and the same is hereby dismissed, and that said Joseph C. Willard pay the costs of this suit; from which decree the def't, Joseph C. Willard, prays an appeal to the Supreme Court of the United States, in open court.

By order of the court:

D. K. CARTTER, *Chief Justice*.

In the Supreme Court of the District of Columbia.

56 *Appeal bond.—Filed June* 20, '68.

GEORGE G. PRESBURY, jr., JAMES SYKES and Henry A. Chadwick,
vs.
THE MAYOR, BOARD OF ALDERMEN, and Board of Common Council of the City of Washington, Henry A. Willard, and Joseph C. Willard.

No. 861. In equity. Docket 8.

Know all men by these presents that we, Joseph C. Willard and Thomas Furse, are held and firmly bound unto George G. Presbury, jr., James Sykes, and Henry A. Chadwick, in the sum of four thou-

sand dollars, to be paid to the said George Presbury, jr., James Sykes and Henry A. Chadwick, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of our heirs, executors and administrators, firmly by these
57 presents. Sealed with our seals, and dated this 20th day of June, A. D. 1868.

Whereas the above-named Joseph C. Willard hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the Supreme Court of the District of Columbia, now, therefore, the condition of the obligation is such that if the above-named Joseph C. Willard shall prosecute his said appeal with effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

[SEAL.] J. C. WILLARD.
[SEAL.] THOMAS FURSE.

Sealed and delivered in presence of—
JOHN FURSE, *Witness.*

Bond approved by—

ANDREW WYLIE.

SUPPLEMENT.

Supreme Court of the United States.

No. 282.

JOSEPH C. WILLARD, Appellant,

vs.

HENRY A. WILLARD ET AL.

It is hereby stipulated and agreed by the parties hereto that the depositions of Richard Wallach, Samuel W. Owen, H. A. Chadwick, and Chas. G. Ball, contained in the transcript of record in the case of Joseph C. Willard, appellant, *vs.* George G. Presbury, jr. et al No. 283, now depending in this Court, (pages 18–23, Record,) shall be considered as the testimony taken in said cause, No. 282, and said testimony is hereby made a part of the record in said cause, No. 282.

It is further stipulated and agreed that any ordinance of the City of Washington, which either party may print with the brief filed in said cause, shall be a part of the record in said cause, No. 282.

It is further stipulated that the charter of the City of Washington, with its amendments, may be recited and referred to at the hearing of said cause with the same force and effect as if the same was specifically set forth in the Record.

R. T. MERRICK,
Attorney for Appellee.
W. F. MATTINGLY,
W. D. DAVIDGE,
For Appellants.

CHAP. XLVIII.—An Act to amend an Act entitled "An Act to amend an Act to incorporate the inhabitants of the City of Washington, passed May fifteen, eighteen hundred and twenty, approved May fifth, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act, approved May fifth, eighteen hundred and sixty-four, entitled "An act to amend 'An act to incorporate the inhabitants of

the city of Washington,' passed May fifteen, eighteen hundred and twenty," be construed amended so as to read as follows: That the said corporation shall have full power and authority to *lay taxes on particular wards, parts, or sections of the city, for their particular local improvements, and to cause the curbstones to be set, the foot and carriage ways, (or so much thereof as they may deem best,) (to be graded and paved;)* to introduce *the necessary sewerage and drainage* facilities under and upon the whole or any portion of any avenue, street, or alley; to cause the same to be suitably paved and repaired, and at all times properly cleaned and watered; to cause lamps to be erected therein, and to light the same and to pay the cost thereof, the corporation of Washington is hereby authorized to lay and collect a tax upon all property bordering upon each street or alley that may be paved, sewered, lighted, cleaned, or watered by said corporation in accordance with the provisions of this act. And also to lay, or cause to be laid, simultaneously with the grading or paving of any avenue, street, or alley in which a main water-pipe or main gas-pipe, or main sewer may have been laid, water or gas service pipes or lateral house drains, from such water or gas main or main sewer to one foot within the curb line in front of every lot or subdivisional part of a lot which may bound on such avenue, street, or alley and to which a gas or water service pipe or house drain nay not have been already laid, and to pay the cost thereof, shall have full power and authority to lay and collect a special tax on every such lot or subdivisional part of a lot.

Approved February 23, 1865.

Ordinance of the City of Washington.

AN ACT to grade and pave Fourteenth Street, from the north side of the Canal to the north side of H Street North.

Be it enacted, &c., That the mayor be, and he is hereby authorized and requested, to cause the carriage-way along Fourteenth street west, from the north side of the canal to the north side of H street north, to be graded and paved with the same kind of pavement as is now laid in F street north, to replace or reset the curbstones, repair or renew the sidewalks or foot pavements whenever necessary, and to cause the necessary sewerage to be made to all lots or subdivisions of lots fronting on the said 14th street, from the north side of the canal to the north side of H street north, the work to be done under the direction of the city surveyor and the superintendence of the commissioner of the second ward and two assistant commissioners to be appointed by the mayor; and to defray the expense incurred under this act a special tax be, and is hereby, levied and imposed, by authority of the act of Congress of the 23d of February, 1865, on all lots and parts of lots along the said 14th street west, from the north

side of the canal to the north side of H street north; the said tax or taxes to be assessed and collected in the same manner as is now provided for in the act of May 23, 1853, for assessing and collecting the cost of laying foot pavements: *Provided*, That the expense of grading and paving such portions of 14th street west as are crossed by other streets, avenues, or public ways, shall not be assessed on the owners of private property, but shall be paid for out of the funds of the second ward, of which a sufficient sum is hereby appropriated.

Approved October 12, 1865.

Act of Congress approved May 15, 1820.

Sec. 10, latter part. And provided, moreover, that when the estate of the tenant in default, *as for years*, or *for life or lives*, shall be sufficient to defray the taxes chargeable thereupon, such estate only shall be liable to be sold under the provisions of this act.

Act of Congress approved May 26, 1824.

Sec. 13. *And be it further enacted*, That when the payment of any taxes shall be made or enforced against any tenant, it shall not be lawful for the owner of said property, so made liable for the taxes, to recover of the tenant any rent for the property, but the same shall remain in his possession a lien for the debt, until such time as the rent accruing shall have discharged the same; and the said tenant shall be entitled to charge twenty-five per centum against the landlord on the amount of the taxes so paid or enforced against him, except when he may have been previously in arrears for his rent.

SUPREME COURT OF THE U. STATES.

JOSEPH C. WILLARD
vs.
PRESBURY, SYKES & CHADWICK. } No. 283.

BRIEF OF

RICHARD T. MERRICK
AND
ROBERT J. BRENT. } *For Appellees.*

SUPREME COURT OF THE U. S.

JOSEPH C. WILLARD
vs.
PRESBURY, SYKES & CHADWICK } No. 283.

Brief of Counsel for Appellees.

1. The evidence taken by the appellees who were complainants in the bill, establishes the following facts:

1. The street, for the repairing of which the special assessmeut referred to in the bill was madé upon the property of the Appellees, had been originally paved under the authority of the Corporation.

2. That at the time of the adoption of the ordinance directing the street to be repaved, the pavement then on the bed of the street was in perfectly good condition and answered all the requirements of the public and the locality through which the street passed.

3. That the passage of the ordinance authorizing the repaving was secured by the misrepresentations of the Appellant, Joseph C. Willard, and his assurance that he owned nearly the entire property upon which the assessment to pay for the work would be levied and his statement and undertaking that if another owner of property contiguous to the work objected to the ordinance, he would pay for the work himself,

Record pp. 19, 20, 21, 22,

Teé Appellant took no evidence, and the proof taken by the Appellee is *uncontradicted*.

I. A corporation is but a person, in law, and if its agent or officers act fraudulently, it is the fraud of the Corporation

and subjects it to the same remedy as if it were a natural person.

Angel & Ames Corporations § 387

Phila. Wil. and Balt. R. R. Co., *vs.* Quigley 21 Hd. 202.

II. Paving a street, thereby changing a road into a street, and bringing the land fronting on it into market, as building lots is a local impovement with *special benefits* to the land and the cost at which these benefits are obtained may be assessed on the property benefited. But where a street is once opened and paved, and has become one of the public highways of the city, *repaving* it with a new and different pavement, or reparing the old one, when necessary, is a part of the general duty of the Corporation, and for which special assessments can not be leved on the adjoining property.

Hammet vs. the City of Philadelphia, Supreme Court of Pennsylvania. Reported in the American Law Register, July 1869.

III. Joseph C. Willard having obtained the passage of the ordinance to repave the street by misrepresentation, if not fraud, a Court of Chancery will compell him to pay the amount of the assessment he thereby caused to be levied on the property of the Appellees.

State vs. Reed, 4 H. & McH. 6.

IV. Joseph C. Willard in order to obtain the passage of the ordinance, having represented to the municipal authorities, that he was liable to pay the special assessment that might be levied under said ordinance on the property leased by him to the Appellees, practised a fraud upon his lessees; and the Court may and should protect them by ordering the assessment to be levied on the reversionary estate of Joseph C. Willard, in the premises, on the principle of marshalling securities.

1 Story Equity, § 633.

V. The lease from Joseph C. Willard to the Appellees

contains a covenant that the lessees shall pay all tones and special assessments, and said Willard having caused and procured a special assessment to be levied on said premises by representing *that he was liable to pay the same*, should be held to the liability assumed by him and decreed to pay the assessment levied upon the premises.

1 Story, Ch. VI, § 256, and cases there cited.

R. T. MERRICK,
R. J. BRENT,
} *For Appellees.*